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No. 74-1336

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

TRICE EUGENE MORRILL, PETITIONER

v.

UNITED STATES OF AMERICA

REPLY TO MEMORANDUM IN OPPOSITION

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TRICE EUGENE MORRILL, PETITIONER

-vs-

UNITED STATES OF AMERICA, RESPONDENT

REPLY TO MEMORANDUM IN OPPOSITION

The Government has consistently missed the legal point contained in the appeal and Petition for Writ of Certiorari. United States v. Kahn (Memorandum for the United States in Opposition, p. 3) is of no help to the Government. In Kahn, 472 F.2d 272 (C.A. 2), cert. den. 411 U.S. 982, the trial court was affirmed in denying further cross-examination of the witness because other, independent documentary evidence, corroborated the testimony of the witness.

In the present instance, on re-direct examination, the Government, for the first time, questioned the witness, Anthony Sedita, concerning his motive in making a deal with the Government. The question asked by the Assistant United States District Attorney trying the case was,

> "Why did you make that agreement? Why did you want to make that agreement?" (Record, p. 129).

On re-cross examination the defendant attempted to enter the wide-open evidentiary door by inquiring into all aspects of the motive of the witness, including the length of time in the federal penitentiary he would potentially save himself. The deal on the Government's part reduced the crime for which the witness had already been indicted to a misdemeanor (having a maximum potential incarceration of only one (1) year) from a felony with a potential penalty of ten (10) years. The witness saved himself nine (9) years in the penitentiary. The consideration of nine (9) years might well have been sufficient to cause the witness to lie as to the identity of the defendant. Alford v. U. S. (1931), 282 U.S. 687, 75 L.Ed. 624, 51 S. Ct. 218; Kotteakos v. U. S. (1945), 328 U.S. 750, 765, 90 L.Ed. 1557; Beaudine v. U. S., 368 F.2d 417, 423-4 (C.A. 5, 1966).

Kahn, supra., is further distinguished because there is no other direct or circumstantial evidence identifying the defendant as the perpetrator of the crime of possession of television sets. All of the other direct evidence as to the identity of the defendant is against the Government's position, including the wife of the witness, Sedita.

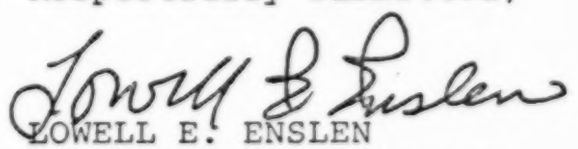
The wife says the defendant was not in her house and not in possession of the television sets. The nephew of the witness, Sedita, said the defendant was not

in the Sedita house and not in possession of the television sets. The husband (Sedita) made a deal with the Government to save himself nine (9) years. The husband is the only person to accuse the defendant of the crime.

A full and complete cross-examination of the witness was not allowed the defendant. The Seventh Circuit in affirming is in conflict with the other circuits, including the Sixth, Ninth, Fifth, First, Third and Eighth. The Seventh Circuit is further in conflict with the Supreme Court in Davis v. Alaska (1974), 415 U.S. 308, 39 L.Ed.2d 347, allowing the right to a broad and searching cross-examination for motive, interest and bias.

The Government has failed consistently to cite any authority to sustain its position, and the Seventh Circuit has not stated any authority to sustain its affirmance. All the law is contrary to the Government's position. Certiorari should be granted and the trial court's judgment reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, LOWELL E. ENSLEN, Counsel for the Petitioner, certify I have deposited in the United States Mail, Air Mail, postage prepaid, forty (40) copies to the Clerk of the United States Supreme Court, and five (5) copies to the Solicitor General of the United States this 16 day of July, 1975.

Lowell E. Enslen

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